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Supreme Court of the United States

OCTOBER TERM, 1945

No. 254

S. R. A. INC.,

Petitioner,

vs.

STATE OF MINNESOTA

No. 255

S. R. A. INC.,

Petitioner,

vs.

STATE OF MINNESOTA (1941 Tax)

BRIEF IN OPPOSITION

GEO. B. SJOSELIUS,
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER,
Assistant County Attorney
Ramsey County, Minnesota.
Attorneys for the Respondent.

Of Counsel:
J. A. A. BURNQUIST
Attorney General

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STATE OF MINNESOTA (1941 Tax)

BRIEF IN OPPOSITION

We take the liberty of consolidating the two cases for the purpose of filing one brief since the question presented and the assessment involved in each is identical. While No. 254 relates to 1940 taxes and No. 255, the 1941 taxes, they are the result of the 1940 assessment. The assessments are made biennially in the even numbered year. Minn. Statutes 1941, Sec. 273.01.

QUESTION PRESENTED

May the State of Minnesota tax lands held by petitioner under contract for deed from the United States of America, before payment of the whole purchase price, if the proceedings are subject to the paramount rights of the United States?

STATUTES INVOLVED

Minnesota Statutes 1941, Section 272.01 provide:

> "All real and personal property in this state, * * * is taxable, except such as is by law exempt from taxation".

THE FACTS

The property in question is located on the northwest corner of Fifth and Wabasha Street in the principal business district of St. Paul. Prior to May, 1939, the United States owned the land and erected thereon a building used for various governmental purposes. For many years immediately prior to that date it had not been used by or for any governmental agency or purpose and was offered for sale as surplus property.

On that date the petitioner entered into a contract for deed with the United States for the sum of $121,101.00 payable in installments for a period of ten years; the United States agreeing to give a deed upon completion of the payments.

Petitioner was to have immediate possession of the property; could encumber its title to the same, could lease all

or any part thereof; or sell parts thereof and obtain a deed prior to payment of full purchase price; (R. 47-48) and could sell and assign its contract without the consent of the United States. (R. 5)

Petitioner did take possession; razed and demolished the building thereon and replaced it with a one-story structure consisting of many stores—which have been leased to various persons. The remainder of the premises have been leased and used as a parking lot. All rents have been retained by S. R. A. for its own account.

No part thereof has ever thereafter been devoted to the business or activities of the United States of America. (R. 49)

The assessment was non-discriminatory. The property was assessed in the same manner as all other property in the county. The true and full value agreed upon was $225,000 (R. 49)

The trial Court found that the petitioner had the equitable title to the property and that the United States had the legal title thereto as trustee for the petitioner, as security for payment of the purchase price, and ordered judgment to be entered in favor of the State, "*subject however to the prior rights, liens and interests of the United States*". (R. 50-51) Judgment was entered directing a sale "*subject however to the prior rights, liens and interests of the United States*". (R. 51-52)

SUMMARY OF THE STATE COURT'S OPINION

The Court determined that the legal title remained in the United States merely as security for payment, while the equitable title vested in petitioner; and that the State of Minnesota had a right to tax petitioner's interest in this property since it did not affect the interests of the United States.

The court distinguished U. S. v. Allegheny County, 322 U. S. 174, upon the following grounds:

(1) Allegheny County attempted to tax machinery the *legal and equitable title* to which was in the United States;

(2) The entire plant was by contract employed as a means to discharge the important national function of waging war;

(3) The sale of the land to collect the tax would be disastrous to the War Effort;

(4) Mesta, as bailee of the machinery, was under a duty to assert the defense of tax immunity to protect the property of the United States.

It held that Irwin v. Wright and all other *statutory land grant cases* are not in point, because the entry man or other persons acting under such a statute does not acquire equitable title until he has completely fulfilled the conditions which entitle him to a patent; but in the case of a vendee, the equitable title vests at once although the naked legal title remains with the vendor as security for the payment of the purchase price.

It declared that partial equitable title is an anomaly in the law. The court criticized such expressions as "complete" equitable title, as used in the land grant cases or "perfect" equitable title as used in Lincoln County v.

Pacific Spruce Corp. (9 Cir.) 26 Fed. 2nd, 435 and as supplied in Ken Realty Co. v. Johnson (5 Cir.) 138 Fed. 2nd, 809.

The *land grant cases* were distinguished, too, because they involved performance of important governmental functions, settlement of the public domain, with which taxation would seriously interfere, if permitted. Here, taxation does not impair a Federal function. It declared that the Minnesota, the Federal, as well as the universal rule is that the equitable title vests as hereinbefore stated. No basis exists for a different rule where the government is the vendor. And where the government was the vendee, the general rule has been applied. It affirmed the principles announced in the earlier appeal (R. 27-38), and asserted that the character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not directly, or indirectly, a tax upon the vendor's legal estate. The state has exercised its taxing power in an uniform and nondiscriminatory manner, so as to impose no greater burden upon buyers of government property than upon other buyers. The government has no right to sell its immunity.

It declared that the state may direct a sale for taxes subject to the paramount interest of the United States, citing New Brunswick v. The United States as authority. The court held that the tax in the New Brunswick case is comparable.

> "Any difference between a security right obtained under a mortgage and that provided for by the retention of the legal title under an executory sales contract is a matter of form only and not of substance." (R. 52-74)

ARGUMENT

I.

Jurisdiction.

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code (28 U. S. C. A., Section 344). But it is not shown that a Federal question is involved; that the question has not heretofore been determined; that the decision is in conflict with the holdings of this court; nor that the petitioner has the right to assert the immunity of the United States from taxation. The decision is in accord with and controlled by City of New Brunswick v. United States, 276 U. S. 547.

II.

No Federal Question is Involved.

The decision is based upon non-Federal grounds. It turned upon the interpretation of state law and statutes declaring that the state law permits taxation of petitioner's equitable title. No interest of the United States was involved or affected. The tax was levied exclusively upon the property of the petitioner. Both in the levy and in the judgment directing the sale, the interests of the United States were expressly declared to be supreme. The judgment directed the sale to be "subject, however, to the prior rights, liens and interests of the United States of America". (R. 51-52). This decision, declaring that an equitable title of the purchaser is taxable under Minnesota

laws, while excluding and shielding the rights of the United States, settled a state question. It therefore follows that this court is without jurisdiction. Lynch v. New York, 293 U. S. 52.

III.

The Decision is in Accord With the Holding of This Court.

We consider the City of New Brunswick v. United States, Supra, (*not cited by petitioner*) to be controlling.

The many decisions cited by the petitioner were all considered by the court below and distinguished. (R. 56-65) The case at bar does not conflict with Kansas Pacific Railway Co. v. Prescott, 16 Wall. 603, Union Pacific R. R. Co. v. McShane, 22 Wall. 444, Northern Pacific Ry. Co. v. Rockne, 115 U. S. 600 and Irwin v. Wright, 258 U. S. 219, all of which involved *statutory land grants* and not the relationship of vendor and purchaser from which an equitable conversion results, even though the contract be executory, and vests an equitable title in the purchaser; nor does it conflict with United States v. Allegheny County, 322 U. S. 174, which involved an attempt to tax personal property, the legal and equitable title to which were in the United States. The court below distinguished Lincoln County v. Pacific Spruce Corp., 26 Federal 2nd 435 and the several state cases dealing with the vendor and purchaser relationship, as unsound and inapplicable because they are founded squarely upon the *land grant cases*. The reasons given for distinguishing all of these cases are set forth in the summary of the court's opinion, which appears on page 4 of this brief. Ken Realty Co. v. Johnson, 138 Federal 2nd,

809, on the other hand, supports the position of the court below and follows the New Brunswick case.

The fact situation in the New Brunswick case was, in effect, the same as in the instant case. There the Housing Corporation, a Federal instrumentality, received a ten per cent down payment, agreed to give a deed and take back a first mortgage for 90% of the unpaid purchase price. Here, the purchaser held under a contract for deed, having the equitable title while the United States retained the legal title as security for the payment of the purchase price. In other words, the government retained a vendor's lien, an interest in the nature of a mortgage. *In substance, the transactions are identical.* (Cf. Helvering v. Lazarus & Co., 308 U. S. 252, 255).

Under such circumstances, the court said:

> "We see no reason, however, if the New Jersey law permits, why the city may not assess taxes against the purchasers *upon the entire value* of the lots and enforce collection thereof by sale of their interests in the property. With that the corporation and the United States have no concern."
> (276 U. S. 555, 556.)

That only the interests of the petitioners were sold, and not those of the United States, expressly appears in the judgment directing the sale in the identical language used in this case (R. 51-52). Of such proceedings, this court said, (p. 556):

> "This, we think, will meet the equities of the case as between the corporation and the city, *and fully protect the paramount right of the United States.*"

Cf. Forbes v. Gracey, 94 U. S. 762, 767; Elden v. Wood, 208 U. S. 226, 231; Union Oil v. Smith, 249 U. S. 337, 349.

Does the relationship of vendor and purchaser, where the vendee had paid part of the purchase price, has taken possession and has all rights of ownership subject to payment of the purchase price in full, in effect amount to the relationship of mortgagor and mortgagee? If so, then the case at bar is controlled by the New Brunswick case.

The authority to tax such an interest under the Constitution and laws of Minnesota is a state question and was determined against the petitioner. Schuykill Trust Co. v. Pennsylvania, 302 U. S. 506, 512, 514; Storaasli v. Minnesota, 283 U. S. 57, 62; General Am. Tank Car Corp. v. Day, 270 U. S. 367, 371; Boston v. Jackson, 260 U. S. 309, 314-316; Illinois Central R. Co. v. Minnesota, 309 U. S. 157, 165; Central Hanover Bank & Trust Co. v. Kelly, 319 U. S. 94, 97; Lewis v. Morson, 151 U. S. 545, 549; Taylor v. Secor, 92 U. S. 575, 618. The only question the petition raises then is the right to tax the property according to its full value, as all other property is taxed. This, likewise, is settled by the New Brunswick case adversely to the petitioner.

III A.

The State Law is Consistent With the Federal Law.

The petitioner contends that the federal law should apply in this case and urges that the land grant cases represent the federal law. The inapplicability of these cases has already been discussed. The decision below turned on both the state and federal rule (R. 65-67).

What is the federal law? In the absence of statute, this court draws upon general principles consistent with equity.

Jackson County v. United States, 308 U. S. 343. In commercial transactions, it follows the general commercial law. The rule applied is determined by reference to the federal and state cases and is such as governs in transaction between private parties. Canfield Trust Co. v. United States, 318 U. S. 363; D'Oench D. and Co. v. Federal Deposit Inv. Corp., 315 U. S. 447; Deitrick vs. Greaney, 309 U. S. 190; National Metropolitan Bank v. United States ...U. S. ..., 89 L. ed. 386, (Advance Opinions); United States vs. Bostwick, 94 U. S. 53; Cory Bros. & Co. v. United States, 51 F. (2d) 1010.

In both jurisdictions, state and federal, the general and almost universal rule is as expressed in Bissell v. Heyward, 96 U. S. 580, 586:

> "* * * the execution of the contract (with partial payment thereon) was a transfer in equity of the title to the land to Bissell; leaving in the representatives of William C. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

Pomeroy Eq. Jur. 5th ed. Vol. 2 § 368; 66 C. J. § 707; Stewart v. Griffith, 217 U. S. 323, 332; Gunton v. Carroll, 101 U. S. 426, 430; Lenman v. Jones, 222 U. S. 51, 54; Lewis v. Hawkins, 23 Wall. 119; National Bank of Ky. vs. Louisville Trust, 67 F. (2d) 97, 100 (Certiorari denied) 291 U. S. 665; Curran v. Kennedy, 94 Minn. 430, 103 N. W. 212; State v. Probate Court, 145 Minn. 155, 176 N. W. 493; Wilder v. Haughey, 21 Minn. 101.

It therefore follows that there is no conflict between the rule as applied by the court below and the federal law; and there is no obstacle to the application and controlling effect of the New Brunswick case.

IV.

Petitioner May Not Assert Federal Immunity From Taxation.

We question the right of the petitioner to assert the federal immunity for its own, exclusive gain, without benefit of any kind resulting to the United States. The petitioner is seeking a "windfall". Panhandle Oil Co. v. Knox, 277 U. S. 218, 224; Helvering v. Mountain Producers Corp. 303 U. S. 376, 386, 387; Graves v. N. Y. 306 U. S. 466, 483; Ex Parte Kumezo Kawato, 317 U. S. 69, 74; Standard Oil Co. v. Fontenot, 4 So. 2nd 634. In the Allegheny case, supra, the defense was asserted for the exclusive benefit of the government.

CONCLUSION

We respectfully submit the petitioner has failed to justify a review on writ of certiorari. The decision is controlled by and is in accord with the New Brunswick case.

GEO. B. SJOSELIUS,
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER,
Assistant County Attorney
Ramsey County, Minnesota.
Attorneys for the Respondent.

Of Counsel:
J. A. A. BURNQUIST
Attorney General